IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-610

NORTHEAST MASTER EXECUTIVE COUNCIL, *Petitioner*

v.

CIVIL AERONAUTICS BOARD, AIR LINE PILOTS ASSOCIATION, INTERNATIONAL, DELTA AIR LINES, INC., DELTA MASTER EXECUTIVE COUNCIL, *Respondents*

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

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BRIEF FOR THE AIR LINE PILOTS ASSOCIATION IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. 1a-20a) is not yet officially reported. The order of the Civil Aeronautics Board (Pet. 21a-27a), No. 73-1-24, is not reported.

JURISDICTION

The judgment of the court of appeals was entered on August 19, 1974 (Pet. 2). On November 1, 1974,

the court of appeals denied a petition for rehearing *en banc* (Pet. 2). The petition for a writ of certiorari was filed on November 18, 1974. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether, in all the circumstances of this case, the Civil Aeronautics Board properly declined an employee request to invalidate the integrated seniority list negotiated by the employees' representatives in good faith pursuant to Board order in an airline merger proceeding.

STATUTE INVOLVED

The relevant statutory provisions are set forth in an Appendix, *infra,* at pp. 1a-2a.

STATEMENT OF THE CASE

A. The Compilation of a Merged Seniority List

In May 1972, the Civil Aeronautics Board approved the carriers' joint application for merger of Northeast Airlines, Inc. and Delta Air Lines, Inc. Consistent with its usual practice, the Board conditioned the merger upon the acceptance of certain provisions designed to protect affected employees. In particular, the Board directed that "provisions shall be made for the integration of [Delta and Northeast] seniority lists in a fair and equitable manner . . . ." (J.A. 6, 173). The Board also expressly reserved jurisdiction to make future modifications in the employee protective provisions "as the circumstances may require." (J.A. 5, 173).

Meanwhile, in contemplation of the merger's approval, the pilots employed by both airlines had al-

ready initiated proceedings, looking toward the compilation of a new seniority list, as prescribed by their collective bargaining representative, the Air Line Pilots Association, International ("ALPA"). For many years, ALPA has maintained and implemented a compulsory internal process, embodied in Section XII of its Policy Manual, governing the integration of ALPA pilot seniority lists in merger cases (J. A. 17-18, 174).

Essentially, the Section XII process contemplates that each affected pilot group will designate two representatives for the purpose of attempting to negotiate a single list. In the event direct negotiations do not succeed, ALPA's President is authorized to invoke mediation; ultimately, final and binding arbitration may be required. Once a single integrated list is compiled—whether by negotiations between the four pilot Merger Representatives or by the award of an arbitrator—it constitutes the official ALPA position regarding seniority in negotiations with the surviving carrier.

Pursuant to the terms of Section XII, both the Delta and Northeast pilot groups had designated two Merger Representatives, who began meeting late in the summer of 1971 (J.A. 17-18, 174-175). By June 1972, after frequent and extensive meetings (J.A. 103), they had reached agreement on the terms of an integrated seniority list, which they published on June 19, 1972 (J.A. 175). Thereafter, for the first time, some Northeast pilot representatives expressed objections to the procedures whereby the list had been compiled.

Under ALPA's Constitution and By-Laws, each ALPA pilot group, on an airline-by-airline basis,

elects its own Master Executive Council ("MEC"), which functions as a local administrative arm of ALPA. (J.A. 174). On or about June 27, 1972, the Northeast MEC conducted a special meeting at which it decided to "repudiate" the integrated seniority list, and to file a written protest with ALPA's President (J.A. 175, 20).

ALPA's Constitution prohibits an MEC from negotiating or executing agreements with employers, and Section XII of the ALPA Merger Policy Manual does not afford an MEC any reviewing authority over a negotiated seniority list (Pet. 12a). Instead, the MEC is simply empowered to designate those who will compile the list. Section XII provides, in relevant part, that ". . . the Master Executive Councils of the affected airlines shall meet and elect two representatives . . . (and) certify these representatives as having complete and full authority to act for and in behalf of the flight deck operating crew members of their respective airline for the purpose of compiling a single flight deck operating crew member seniority list." (J. A. 43).

On June 29, and again on July 28, 1972, the Northeast MEC requested ALPA President O'Donnell to repudiate the merged seniority list, largely on the grounds that the seven-member MEC had voted to disapprove it (J. A. 77). President O'Donnell, by letter dated August 1, 1972, declined (J.A. 175-176). As his letter explained, it is the Merger Representatives, not the MEC, who have the complete and full authority to compile a merged list pursuant to the ALPA Merger Policy. Once Merger Representatives have reached an agreement, it was explained, no authority remained in the MEC to alter its terms (J. A. 79).

Pursuant to the implementation provisions of ALPA's Merger Policy, President O'Donnell forwarded the June 1 seniority list to Delta management for negotiation and adoption. (J.A. 21, 158-160, 175). On October 26, 1972, Delta agreed to adopt the June 1972 seniority list and to modify its existing collective bargaining agreement with ALPA so as to permit the new list's implementation (J. A. 175).

B. Proceedings Before the Board

In October 1972, the MEC requested the Board to exercise its reserved jurisdiction, declare the June 1972 list "unfair," and direct the preparation of new and different seniority list by resort to arbitration (J.A. 17-25). According to the MEC, the June 1972 list was not a "fair and equitable" one within the meaning of the Board's protective provisions because:

(a) the June 1972 list afforded more favorable treatment to Delta pilots, at the expense of Northeast pilots, than conformity with the length of service principle would have required, and

(b) the Northeast pilot Merger Representatives failed to comply, in their negotiations, with "instructions" they allegedly received from the Northeast MEC.

The Board concluded that "the facts as presented in the pleadings before us do not warrant the exercise of our retained jurisdiction" (J. A. 177), and the request for invalidation of the list was dismissed. The Board held that "the use of factors in addition to date of hire or length of service" was neither unusual nor probative of unfairness in the compilation of a merged list (J.A. 177). Moreover, the

Board concluded, the allegations of procedural defects in the internal union process were inadequate to require further Board inquiry especially in light of the fact that "No bad faith on anyone's part is alleged . . ." (J.A. 177).

C. Decision of the Court of Appeals

The court of appeals affirmed the Board's order, concluding, after a detailed review of the record, that petitioner had failed to demonstrate any irregularity in procedure or substantive defect in the list itself (Pet. 12a-14a).

ARGUMENT

The decision of the court of appeals is clearly correct, and there is no conflict of decisions. No issue warranting review by this Court is presented.

Petitioner's contentions and allegations in the court below neither required nor occasioned any broad legal rulings of general significance. Instead, petitioner sought to demonstrate the "unfairness" of the freely negotiated seniority list by reference to the individual characteristics of the list itself, and to particularized complaints about the precise manner in which it was compiled. On this record, therefore, petitioner has demonstrated neither the need for any new "guidelines" (Pet. 5) from the Court, nor the vehicle for their promulgation.

For example, one of petitioner's major contentions below was that the Northeast pilot Merger Representatives kept secret the details of their on-going negotiations with the Delta pilot Merger Representatives. As the court of appeals correctly observed, however, petitioner itself selected these Merger Representatives

and could have revoked their authority at any time. Moreover, petitioner knew, long before the seniority negotiations were concluded, that their Merger Representatives would not reveal the details of their negotiations. But no protest over "secrecy", or anything else, was ever voiced by petitioner until well after the new seniority list was published (Pet. 9a-10a; J.A. 19, 172).

Petitioner also contended below that its Merger Representatives failed to follow certain "instructions" assertedly requiring their insistence upon a seniority list based solely upon pilot length of service. But, under the applicable ALPA Merger Policy, such instructions were nugatory, in view of the broader approach required by prior pilot balloting (Pet. 8a, 10a-11a; J. A. 41-43, 174).

Finally, in challenging the list itself, petitioner's arguments ultimately amount to no more than a demand for a greater reliance upon length of service than the negotiators of the integrated list chose to employ. Such an expression of subjective dissatisfaction is both an inadequate basis to jeopardize an otherwise valid seniority accommodation, *Ford Motor Co.* v. *Huffman*, 345 U.S. 330, 338-39 (1953); *Outland* v. *CAB*, 284 F.2d 224, 228 (D. C. Circ. 1960); see *Humphrey* v. *Moore*, 375 U.S. 335, 347 (1964), and an inappropriate premise for any additional review.[1]

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[1] Petitioner contends (Pet. 6) that a conflict "in principle" exists between the decision of the court of appeals and the rationale of the Second Circuit in *American Airlines* v. *CAB*, 445 F.2d 891 (2d Cir. 1971), certiorari denied, 404 U.S. 1015 (1972). But both courts explicitly concurred in the only common principle involved: namely, that CAB-ordered arbitration is the appropri-

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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ate method of integrating seniority lists in merger cases in which the parties cannot reach an agreement by negotiation. (Pet. 6a-8a).

In *American Airlines*, the Board, with court approval, ordered arbitration of a new seniority list and declined to sanction a proposed voluntary arrangement because the representatives of both affected employee groups had not consented to or participated in its compilation. The proposal was, instead, solely the product of discussions between the surviving carrier and its own pre-merger employees. *American-Trans Caribbean Merger Case*, CAB Order 71-5-30, Docket 21028 (May 7, 1971), aff'd *sub nom. American Airlines, supra*, 445 F.2d at 893-894.

In the instant case, as shown, the Board accepted the negotiated result and refused to direct arbitration precisely because both employee groups, through their designated representatives, freely negotiated and concluded an agreement.

APPENDIX

The relevant provisions of the Federal Aviation Act of 1958, 72 Stat. 737, 49 U.S.C. 1301, *et seq* are:

JUDICIAL REVIEW OF ORDERS

Sec. 1006

(a) Any order, affirmative or negative, issued by the Board or Secretary of Transportation under this Act, except any order in respect of any foreign air carrier subject to the approval of the President as provided in section 801 of this Act, shall be subject to review by the courts of appeals of the United States or the United States Court of Appeals for the District of Columbia upon petition, filed within sixty days after the entry of such order, by any person disclosing a substantial interest in such order. After the expiration of said sixty days a petition may be filed only by leave of court upon a showing of reasonable grounds for failure to file the petition theretofore.

Venue

(b) A petition under this section shall be filed in the court for the circuit wherein the petitioner resides or has his principal place of business or in the United States Court of Appeals for the District of Columbia.

(c) A copy of the petition shall, upon filing, be forthwith transmitted to the Board or Secretary of Transportation by the clerk of the court, and the Board or Secretary of Transportation shall thereupon file in the court the record, if any, upon which the order complained of was entered, as provided in section 2112 of title 28, United States Code.

Power of Court

(d) Upon transmittal of the petition to the Board or Secretary of Transportation, the court shall have exclusive jurisdiction to affirm, modify, or set aside the order com-

plained of, in whole or in part, and if need be, to order further proceedings by the Board or Secretary of Transportation. Upon good cause shown and after reasonable notice to the Board or Secretary of Transportation, interlocutory relief may be granted by stay of the order or by such mandatory or other relief as may be appropriate.

Findings of Fact Conclusive

(e) The findings of facts by the Board or Secretary of Transportation, if supported by substantial evidence, shall be conclusive. No objection to an order of the Board or Secretary of Transportation shall be considered by the court unless such objection shall have been urged before the Board or Secretary of Transportation or if it was not so urged, unless there were reasonable grounds for failure to do so.

Certification or Certiorari

(f) The judgment and decree of the court affirming, modifying, or setting aside any such order of the Board or Secretary of Transportation shall be subject only to review by the Supreme Court of the United States upon certification or certiorari as provided in section 1254 of title 28, United States Code.